

AML Requirements Proposed for Investment Advisers

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After more than a decade of delay, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) proposed new regulations that would extend mandatory anti-money laundering (AML) requirements to all investment advisers registered or required to be registered with the SEC under the Investment Advisers Act. **FinCEN proposes to include investment advisers in the general definition of "financial institution," and the regulations would generally extend to all advisory clients**, including hedge funds, private equity funds, and other private funds. The proposed regulations, announced on August 25, would require investment advisers to develop and implement written AML programs tailored to address the specific risk posed by the services it provides and the clients it advises. The AML program would be required to provide for internal controls to ensure compliance, periodic testing to assess compliance, an AML officer to implement and monitor the program, and ongoing training for the adviser's employees, agents, and third-party service providers. Additionally, the regulations would require investment advisers to

- report suspicious activities to U.S. authorities, which would impose obligations on them similar to those that the Bank Secrecy Act imposes on financial institutions such as mutual funds, broker-dealers in securities, banks, and insurance companies;
- file currency transaction reports and keep records regarding the transmittal of funds;
- respond to information requests from U.S. law enforcement pursuant to the USA Patriot Act; and
- comply with recordkeeping and travel rules that apply to transmittal of funds by non-bank financial institutions.

Under FinCEN's proposal, the SEC will have authority to examine investment advisers for compliance with these requirements. If the proposed regulations are adopted, an investment adviser that fails to comply may be at risk for civil or criminal liability.

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